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OFFICE OF PETITIONS

In re Application of
Fermann, et al.
Application No. 10/608,233
Filed: June 30, 2003
Attorney Docket No. A8596
For: IN-LINE, HIGH ENERGY FIBER CHIRPED
PULSE AMPLIFICATION SYSTEM

ON PETITION

This is a decision on the petition filed October 27, 2003, requesting, in effect, that the Notice to File Missing Part(s) of Nonprovisional Application, mailed September 26, 2003, be withdrawn, insofar as it alleges that Figures 9a and 9b appeared to have been omitted from the application. The petition will be treated under 37 CFR 1.53(e).

The petition is **dismissed**.

The application was filed on June 30, 2003. On September 26, 2003, the Office of Initial Patent Examination mailed a Notice stating, *inter alia*, that the application had been accorded a filing date of June 30, 2003, and advising applicants that Figures 9a and 9b described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners desire that Figures 9a and 9b be accorded a June 30, 2003 filing date. Petitioners point to their incorporation by reference statement on the transmittal letter, filed June 30, 2003, to show that since the omitted drawing figures were part of provisional application no. 60/474,999, that the drawing figures should be considered part of the disclosure of the present nonprovisional application. In addition, petitioners argue that Figures 9a and 9b were filed on June 30, 2003 and refer to an enclosed date stamped postcard receipt that allegedly proves 14 sheets of drawing figures were received by the Office on June 30, 2003.

The referenced postcard receipt cannot be located. However, it is not necessary to resolution of the issue at hand.

The missing postcard receipt would presumably show that 14 pages were filed on June 30, 2003. A review of the application papers filed on June 30, 2003 shows that 14 pages of drawings are indeed present. Instead of Figures 9a and 9b, applicants filed Figures 8a and 8b on June 30, 2003. It is noted that the Brief Description of the Drawings filed on June 30, 2003 does not describe Figures 8a and 8b, but refers to Figures 9a and 9b. A comparison of Figures 8a and 8b, filed on June 30, 2003, and Figures 9a and 9b, filed with the instant petition, reveals that they are the same figures. The only difference between the two sheets of drawings is the labeling of the figures.

It is apparent that petitioners referred to the drawings in an inconsistent manner in the Brief Description of the Drawings and in the drawing figures filed on June 30, 2003, but all intended figures were filed on that date.

Therefore, the "Notice" mailed September 26, 2003, was correct in advising applicants that Figures 9a and 9b appeared to have been omitted. The "Notice" was properly mailed and will not be withdrawn. The petition fee is required, since the petition was not necessary to correct any PTO error.

To avoid further delay in the examination of the application, a letter to the draftsman correcting the labeling of the drawing figures should be filed prior to the first Office action.

The application is being returned the Office of Initial Patent Examination for further processing with the presently accorded filing date of June 30, 2003. Figures 9a and 9b submitted with the instant petition will not be considered part of the original filing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.

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